

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
DOCKET NO. 1:16-cv-00314-FDW-DSC**

DERICK SHAY SAWYER,

Plaintiff,

vs.

**NANCY A. BERRYHILL,¹
Commissioner of Social Security,**

Defendant.

ORDER

THIS MATTER is before the Court upon Plaintiff’s Motion for Summary Judgment (Doc. No. 9), Defendant’s Motion for Summary Judgment (Doc. No. 11), and the Memorandum and Recommendation (“M&R”) of Magistrate Judge David S. Cayer (Doc. No. 13). For the reasons set forth below, the Court **ACCEPTS** and **ADOPTS** the M&R, **GRANTS** Plaintiff’s Motion for Summary Judgment, and **DENIES** Defendant’s Motion for Summary Judgment. The Commissioner’s decision is **REVERSED**, and the matter is **REMANDED** for further proceedings consistent with the M&R.

The Federal Magistrate Act provides that “a district court shall make a de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); Canby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983). “By contrast, in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is substituted for Carolyn W. Colvin as the Defendant herein. No further action is necessary pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).


record in order to accept the recommendation.”” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Here, no party filed any objection to the M&R, and the time for doing so has expired.

Accordingly, after a careful review of the record in this case, the Court finds that the Magistrate Judge’s findings of fact are supported by the record and his conclusions of law are consistent with and supported by current case law. Thus, the M&R (Doc. No. 13) is ACCEPTED and ADOPTED, Plaintiff’s Motion for Summary Judgment (Doc. No. 9) is GRANTED, and Defendant’s Motion for Summary Judgment (Doc. No. 11) is DENIED. The Commissioner’s decision is REVERSED, and this matter is REMANDED for a new hearing consistent with the M&R.

The Clerk’s Office is respectfully directed to CLOSE THE CASE.

IT IS SO ORDERED.

Signed: June 19, 2017


Frank D. Whitney
Chief United States District Judge

